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Supreme Court, U.S.
FILED
DEC 21 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-846

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

IN RE KENDAVIS HOLDING COMPANY AND KENDAVIS INDUSTRIES INTERNATIONAL, INC., .

Debtors

K.W. DAVIS, JR., ALANA LAWLER, ALANA LAWLER TRUST "A," A. T. DAVIS, A. T. DAVIS TRUST "A," KAY DAVIS, KAY DAVIS TRUST "A," TRICIA KAE LAWLER, ALANA LAWLER CHILDREN'S TRUST, ALLEN KENNETH DAVIS, JANIECE BREANNE DAVIS, A. T. DAVIS CHILDREN'S TRUST, KAY DAVIS CHILDREN'S TRUST, T. C. DAVIS, II, T. C. DAVIS, II TRUST, T. C. DAVIS, II TRUST "A," T. C. DAVIS, II TRUST "A" DATED JANUARY 15, 1982, BRIAN KEITH DAVIS, BRIAN KEITH DAVIS TRUST, BRIAN KEITH DAVIS TRUST "A," BRIAN KEITH DAVIS TRUST DATED JANUARY 15, 1982, CHESLEY DAVIS, CHESLEY DAVIS TRUST, TREY DAVIS, TREY DAVIS TRUST, KEN W. DAVIS FOUNDATION, AND TWALLA DUPRIEST, TRUSTEE FOR ESTATE OF T. C. DAVIS,

Petitioners

V.

THE OFFICIAL UNSECURED CREDITORS' COMMITTEES FOR KENDAVIS HOLDING COMPANY, KENDAVIS INDUSTRIES INTERNATIONAL, INC. AND LOFFLAND BROTHERS COMPANY, KENDAVIS HOLDING COMPANY, FEDERAL DEPOSIT INSURANCE CORPORATION, BANK OF NOVA SCOTIA, AND MBANK HOUSTON, N.A.,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JOINT APPENDIX TO BRIEFS IN OPPOSITION OF RESPONDENTS KENDAVIS HOLDING COMPANY AND THE OFFICIAL UNSECURED CREDITORS' COMMITTEES

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IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: KENDAVIS HOLDING COMPANY, ET AL., *Debtors/Appellants.*	CIVIL ACTION NO. CA 3-86-2995-G

MEMORANDUM ORDER

This case is before the court on appeal from orders and related findings of the Bankruptcy Court confirming a creditor plan of reorganization, denying a debtor plan of reorganization, and denying a new trial as to the debtor plan of reorganization.

I. Parties

The appellants include Kendavis Holding Company ("KHC"), Kendavis Industries International, Inc. ("KIII"), Loffland Brothers Company ("Loffland"), Mid-Continent Supply Co. ("Mid-Continent"), Geodril, Inc. ("Geodril"), Loffland Brothers Eastern Hemisphere, Inc. ("LBEH"), Loffland Brother (Singapore) PTE., Ltd. ("LBS"), Cummins Sales and Service, Inc. ("Cummins"), Frigette Corporation, Inc. ("Frigette"), Globe Machinery and Supply Company ("Globe"), Harrisburg, Inc. ("Harrisburg"), Kendavis Industrial Supply Co. ("KISCO"), Mechanical Rubber Products Corporation ("Mechanical Rubber"), Miami-Dickerson Steel Company ("Miami-Dickerson"), Midco Equipment Co. ("Midco"), Moore & Sons, Inc. ("Moore"), Rig-A-Lite Company, Inc. ("Rig-A-Lite"), Sligo, Inc. ("Sligo"), State Pipe & Supply Co. ("State Pipe"), and Unit Rig & Equipment Co.

("Unit Rig"). Appellees are the Official Unsecured Creditors' Committees for KHC, KIII and Loffland ("the Committees") and various other creditors.

II. Procedural Background

The underlying chapter 11 bankruptcy cases of KIII and KHC commenced on February 21, 1985 when eight unsecured institutional creditors owed in excess of $440,000,000.00 filed involuntary petitions for relief. KIII and KHC consented to the filings, and orders for relief were entered on March 19, 1985. Loffland filed a voluntary petition for relief under chapter 11 on March 17, 1985.

On August 6, 1986, the Bankruptcy Court issued an order denying confirmation of the Debtors' Third Amended Joint Plan of Reorganization (the "Debtors' Plan").[1] The Debtors filed a motion for new trial which was denied on November 24, 1986.

On November 24, 1986, the Bankruptcy Court confirmed the Committees' Plan as to KHC and KIII but denied confirmation of the stand-alone portion of the Committees' Plan relating to Loffland.

The appellants assert various defects in the Committees' Plan which, they maintain, make the plan unconfirmable. In addition, they raise questions of jurisdiction and challenge the order denying confirmation of the Debtors' Plan. Appellees have moved to dismiss the appeals for lack of standing.

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[1] The Debtors' Plan was also filed by KIII, KHC and Loffland. It was also jointly proposed by Mid-Continent, Geodril, LBEH, and LBS, each of which either consented to orders for relief in then pending involuntary cases or filed voluntary petitions for relief under chapter 11. The cases of KIII, KHC, Loffland, Mid-Continent, Geodril, LBEH and LBS have subsequently been administered jointly under Case No. 385-30348-M-11. The seven debtor proponents of the Debtors' Plan are sometimes referred to collectively as the "Debtors."

III. Standing

Appellants have raised forty-three issues for consideration on this appeal. *See* Brief of Appellants, pp. 2-7. They have standing, however, to challenge only those parts of the reorganization plan that affect their direct interests. In re Johns-Manville Corporation, 68 Bankr. 618, 623 (Bankr. S.D. N.Y. 1986); In re Evans Products Company, 65 Bankr. 870, 874 (S.D. Fla. 1986); In re Sweetwater, 57 Bankr. 743, 746 (D. Utah 1985). To have standing to appeal, the appellant must be an aggrieved person, directly, adversely, and pecuniarily affected by the order of the Bankruptcy Court. *In re Sweetwater,* above, 57 Bankr. at 746; Holywell Corporation v. Bank of New York, 59 Bankr. 340, 349-50 (S.D. Fla. 1986).

The court is of the opinion that Loffland has no standing to appeal confirmation of the Committees' Plan. The Committees' Plan contained a stand-alone plan of reorganization for Loffland, which was denied in the order of confirmation. Loffland is not aggrieved by denial of the Committees' stand-alone plan for Loffland or by confirmation of the remainder of the Committees' Plan.

KHC and KIII are insolvent. This insolvency is an insurmountable threshold which denies standing to KHC and KIII to assert any issue on appeal. Matter of Dutch Inn of Orlando, Ltd., 614 F.2d 506, 507-08 (5th Cir. 1980); Matter of Fondiller, 707 F.2d 441, 442 (9th Cir. 1983); *In re Evans Products Co.,* above, 65 Bankr. at 874; Matter of Snyder, 56 Bankr. 1007, 1011 (N.D. Ind. 1986); *Holywell Corporation v. Bank of New York,* above, 59 Bankr. at 349-50; *In re Sweetwater,* above, 57 Bankr. at 746-47. The court is therefore of the opinion that KHC and KIII are not aggrieved persons and do not have standing to appeal the confirmation of the Committees' Plan.

The court is also of the opinion that the subsidiary corporations[2] lack standing to appeal confirmation of the Committees' Plan. After the Committees' Plan was modified, the time for filing objections to it was extended until May 12, 1986. No objections on behalf of the subsidiary corporations were filed by May 12, 1986. Although the subsidiary corporations did file late objections to perceived asset transfers only, no leave was sought below to file them out of time. This court will not consider issues not properly presented to, and decided by, the court below. *See* In re Modern Boats, Inc., 775 F.2d 619, 621 (5th Cir. 1985); Masat v. United States, 745 F.2d 985, 988 (5th Cir. 1984).

Moreover, the actual objections raised as to the perceived asset transfers are premature. No transfers from the subsidiary corporations to KHC or KIII have yet been presented to the Bankruptcy Court, and none has been approved. Thus, the issue of perceived asset transfers is not ripe for appeal.

The court is of the further opinion that the Davis Family,[3] as shareholders of KHC, are not aggrieved persons and have no standing to appeal. Since their interests in KHC are without value, they have no stake in these appeals as shareholders. *See, e.g., In re Evans Products Co.*, above, 65 Bankr. at 874-75.

K.W. Davis, Jr., T.C. Davis and Kay Davis have class 6 creditor claims. All three voted to reject the Committees' Plan.

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[2] Mid-Continent, Geodril, LBEH, LBS, Cummins, Frigette, Globe, Harrisburg, KISCO, Mechanical Rubber, Miami-Dickerson, Midco, Moore, Rig-A-Lite, Sligo, State Pipe and Unit Rig.

[3] Collectively, Kenneth W. Davis, Jr. and T. Cullen Davis, Alana Lawler, Alana Lawler Trust "A," A.T. Davis Trust "A," Kay Davis, Kay Davis Trust "A," Tricia Kae Lawler, Alana Lawler's Children's Trust, Allen Kenneth Davis, Janiece Breanne Davis, A.T. Davis Children's Trust, Kay Davis Children's Trust, T.C. Davis, II, T.C. Davis, II Trust, T.C. Davis, II Trust "A," T.C. Davis, II Trust "A" dated January 15, 1982, Chesley Davis, Chesley Davis Trust, Trey Davis, Trey Davis Trust, and Ken W. Davis Foundation.

As creditors, these three Davises would normally have standing to appeal. In this case, however, not a single member of the Davis Family, as either shareholder or creditor, made an appearance at the confirmation hearings on the Committees' Plan or filed written objections, as contemplated by Bankruptcy Rule 3020 and as required by the Bankruptcy Court in this case. All of the Davis Family had notice of such hearings. Voting to reject the Committees' Plan did not, alone, preserve what standing K.W. Davis, Jr., T.C. Davis and Ray Davis [sic] might have had to appeal. None of the Davis Family members have a right to be heard for the first time on appeal. *See* Bankruptcy Rule 3020; In re Neff, 60 Bankr. 448, 457-58 (Bankr. N.D. Tex. 1985); In re Sweetwater, 57 Bankr. 748, 750 (D. Utah 1985) (*Sweetwater II*); In re Record Club of America, 38 Bankr. 691, 696-97 (M.D. Pa. 1983).

IV. Conclusion

For the foregoing reasons, this court concludes that KHC, KIII, Loffland, the subsidiary corporations, and the Davis Family do not have standing to attack the Committees' Plan on appeal. Appellees' motion to dismiss is thus GRANTED in part, and the appeals by these parties from confirmation of the Committees' Plan are DISMISSED.

At no time, however, do the appellees argue persuasively that the Debtors lack standing to take an appeal from denial of confirmation of the Debtors' Plan. Instead, the appellees urge that consideration of a plan other than the Committees' Plan is precluded. The court disagrees. It might be determined that the Debtors' Plan is confirmable and that these cases should be remanded to the Bankruptcy Court for a determination as to which plan to confirm. 11 U.S.C. §1129(c).

Accordingly, the merits of the Debtors' Plan is considered in a separate memorandum order. Appellees' motion to dismiss

is DENIED in part as to the alleged mootness of any consideration of the Debtors' Plan.

SO ORDERED.

March 26, 1987.

/s/ A. Joe Fish

A. JOE FISH
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

OFFICIAL SHAREHOLDERS COMMITTEE OF MID-CONTINENT SUPPLY CO.,
Plaintiff,

vs.

KENDAVIS HOLDING CO., ET AL.,
Defendants.

CIVIL ACTION NO.
CA 3-86-3108-G

ORDER

This case is before the court on appeal of the Official Shareholders Committee of Mid-Continent Supply Company ("Mid-Continent Shareholders Committee") from an order and related findings of the Bankruptcy Court, which confirmed a creditor plan of reorganization for Kendavis Holding Company ("KHC") and Kendavis Industries International, Inc. ("KIII"). Mid-Continent Supply Company ("Mid-Continent") is a subsidiary of KHC.

The Mid-Continent Shareholders Committee does not represent any interest of creditors or shareholders of KHC or KIII, or any creditor of Mid-Continent. Rather, it represents only the interests of owners of Class B stock of Mid-Continent. The court is of the opinion that the Mid-Continent Shareholders are not aggrieved parties with respect to the confirmation of the Committees' Plan. *See, e.g.*, In re Evans Products Co., 65 Bankr. 870, 874 (S.D. Fla. 1986), In re Snyder, 56 Bankr. 1007, 1011 (N.D. Ind. 1986); Holywell Corporation v. Bank of New York, 59 Bankr. 340, 349-50 (S.D. Fla. 1986); In re Sweetwater, 57 Bankr. 743, 746-47 (D. Utah 1985); Matter of Dutch Inn of Orlando, Ltd., 614 F.2d 506, 507-08 (5th Cir. 1980).

Accordingly, the motion to dismiss the appeal of the Mid-Continent Shareholders Committee is GRANTED and the appeal of the Mid-Continent Shareholders Committee is DISMISSED.

SO ORDERED.

March 26, 1987.

/s/ A. Joe Fish

A. JOE FISH
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: KENDAVIS HOLDING COMPANY, ET AL., *Debtors/Appellants.*	CIVIL ACTION NO. CA 3-86-2995-G

ORDER

Appellants have filed a joint motion for an expedited appeal and determination that the Modified Joint Plan of Reorganization ("Committees' Plan") for debtors Kendavis Holding Company ("KHC") and Kendavis Industries International, Inc. ("KIII") cannot be implemented. Appellants have, alternatively, filed a joint motion for stay pending appeal. For the reasons set forth in this court's memorandum order of March 26, 1987, which granted, in part, appellees' motion to dismiss, this court is of the opinion that appellants do not have standing to pursue appeals of the confirmation of the Committees' Plan. Accordingly, appellants' joint motion for expedited appeal and determination that the Committees' KIII/KHC Plan cannot be implemented is DENIED. Appellants' joint motion for stay pending appeal is also DENIED.

SO ORDERED.

March 26, 1987.

/s/ A. Joe Fish

A. JOE FISH
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: KENDAVIS HOLDING COMPANY, ET AL., *Debtors/Appellants.*	CIVIL ACTION NO. CA 3-86-2995-G

JUDGMENT

This cause came on to be heard on the record on appeal and taken under submission on the briefs on file.

On consideration whereof, it is now here ORDERED and ADJUDGED by this court that the order of the Bankruptcy Court appealed from in this cause is AFFIRMED.

It is further ORDERED that debtors/appellants pay to creditors/appellees the costs on appeal, to be taxed by the clerk of this court.

March 26, 1987.

/s/ A. Joe Fish

A. JOE FISH
United States District Judge

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE: KENDAVIS HOLDING COMPANY, ET AL., *Debtors/Appellants.*	CIVIL ACTION NO. CA 3-86-2995-G

ORDER

The Davis family have filed a motion to join the corporate appellants' implementation motion. The motion to join is DENIED.

SO ORDERED.

March 26, 1987.

/s/ A. Joe Fish

A. JOE FISH
United States District Judge

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Case No. 87-1251

In re KENDAVIS HOLDING COMPANY, KENDAVIS INDUSTRIES INTERNATIONAL, INC., LOFFLAND BROTHERS COMPANY, MID-CONTINENT SUPPLY CO., GEODRIL INC., LOFFLAND BROTHERS EASTERN HEMISPHERE, INC., AND LOFFLAND BROTHERS (SINGAPORE) PTE. LTD.,

Debtors,

KENDAVIS HOLDING COMPANY, KENDAVIS INDUSTRIES INTERNATIONAL, INC., LOFFLAND BROTHERS COMPANY, MID-CONTINENT SUPPLY CO., GEODRIL INC., LOFFLAND BROTHERS EASTERN HEMISPHERE, INC., AND LOFFLAND BROTHERS (SINGAPORE) PTE. LTD., CUMMINS SALES & SERVICE, INC., FRIGETTE CORPORATION, GLOBE MACHINERY & SUPPLY COMPANY, HARRISBURG, INC., KENDAVIS INDUSTRIAL SUPPLY CO., MECHANICAL RUBBER PRODUCTS CORPORATION, MIAMI-DICKERSON STEEL COMPANY, MIDCO EQUIPMENT CO., MOORE & SONS, INC., RIG-A-LITE COMPANY, INC., SLIGO, INC., STATE PIPE AND SUPPLY CO., AND UNIT RIG & EQUIPMENT CO.,

Appellants,

VS.

THE OFFICIAL UNSECURED CREDITORS' COMMITTEES FOR KENDAVIS HOLDING COMPANY, KENDAVIS INDUSTRIES INTERNATIONAL, INC., AND LOFFLAND BROTHERS COMPANY,

Appellees.

AMENDED AFFIDAVIT OF DAVID E. HAWTHORNE

DAVID E. HAWTHORNE, being first duly sworn, deposes and says:

1. I am currently Secretary of the Kendavis Holding Company ("KHC") and a director and officer of KHC and various KHC subsidiaries. I have served as an officer of KHC and its wholly owned subsidiaries since April 16, 1987 and have served as an officer and director of certain other KHC subsidiaries since May 1, 1987.

2. I have personal knowledge of the events and actions described below, all of which were taken to implement the Official Unsecured Creditors' Committee's Modified Joint Plan of Reorganization for KHC and Kendavis Industries International, Inc. the ("Confirmed Plan") or otherwise in the conduct of the business of KHC and its subsidiaries on or after April 16, 1987, the effective date of the Confirmed Plan (the "Effective Date").

SUMMARY OF THE BUSINESS AND STRUCTURE OF THE KHC COMPANIES

3. KHC is a Nevada corporation. The principal assets of KHC consist of the stock of its subsidiaries. Prior to its merger into KHC on the Effective Date, Kendavis Industries International, Inc. ("KIII") was a Texas corporation that provided financial, management and other services to the various KHC subsidiaries, which subsidiaries are engaged in a variety of businesses ranging from contract drilling and related oil field services to the manufacture and sale of heavy equipment. Subsequent to KIII's merger into KHC on the Effective Date, KHC has provided management services to the KHC subsidiaries. Except for KIII, which no longer exists, all of the KHC Appellants, as that term is defined in the Brief in Support of Motion of the KHC Appellants to Dismiss Their Appeal and the Appeal of the Davis Family Appellants, are direct or indirect subsidiaries of KHC. KHC is the principal or sole

shareholder of each of its direct subsidiaries. Certain of these direct subsidiaries also own all or substantially all of the outstanding stock of other corporations (second tier subsidiaries) which, in turn, own all or substantially all of the outstanding stock of other corporations (third tier subsidiaries).

4. Until the Effective Date, all of the stock of KHC was owned by members of the Davis family. Members of the Davis family also served as the principal management of KHC and its subsidiaries. Kenneth W. Davis, Jr. was Chairman of the Board and President of KHC; T. Cullen Davis was Vice President of KHC and Kay Davis was Secretary of KHC. In addition, each of KHC's direct subsidiaries had at least one member of the Davis family as an officer and director of such corporation.

5. Amended Articles of Incorporation for KHC were filed on the Effective Date in the office of the Secretary of State of Nevada. All previously outstanding shares of stock of KHC (all of which were held by the Davis Family) were cancelled, and new common and preferred stock ("KHC Common and Preferred Stock") to be issued pursuant to Confirmed Plan to holders of KIII-7/KHC-7 allowed claims (the "Class 7 Claims") was authorized.

6. On the Effective Date, KIII was merged into KHC as required by the terms of the Confirmed Plan and in accordance with applicable corporate laws of the States of Nevada and Texas. Certificates of Merger were filed with the Secretaries of State of Nevada and Texas, upon which the separate corporate existence of KIII ceased and KHC succeeded to all of KIII's assets and liabilities.

PAYMENTS AND DISTRIBUTIONS UNDER THE PLAN

7. Pursuant to the Confirmed Plan, an aggregate of 3,574,639 shares of KHC Common Stock and 1,191,546 shares of KHC Preferred Stock was issued in respect of allowed Class 7 Claims under the Confirmed Plan on the Effective Date. As a result of the resolution of previously contested Class 7 Claims, through September 9, 1987, an aggregate of an additional 5,335,369 shares of KHC Common Stock and 1,778,458 shares of KHC Preferred Stock have been issued to holders of Class 7 Claims since the Effective Date. There are now 26 holders of KHC Common and Preferred Stock. The current holders are: American Bank & Trust Co., The Bank of New York, The Bank of Nova Scotia, Bank of Oklahoma, N.A., The Chase Manhattan Bank, N.A., Credit Commercial de France (New York Branch), Den Norske Creditbank, Continental Illinois National Bank and Trust Company of Chicago, as Administrator for the Federal Deposit Insurance Corporation, Federal Deposit Insurance Corporation, in its corporate capacity, First City National Bank of Fort Worth, First City National Bank of Houston, First Interstate Bank of California, C.S.M., Inc., InterFirst Bank Fort Worth, N.A., Irving Trust Company, Marine Midland Bank, N.A., City Investment Company, Morgan Guaranty Trust Company of New York, Sanwa Bank California, Seattle First National Bank, Security Pacific National Bank, Texas American Bank/Fort Worth, N.A., Beta Development Co., Mechanical Rubber Products Corporation, Miami-Dickerson Steel Company and Sligo, Inc. The remaining authorized but unissued KHC Common and Preferred Stock, aggregating 89,992 shares and 29,996 shares, respectively, is reserved for issuance to holders of Class 7 Claims upon resolution of the remaining disputed claims.

8. Pursuant to the Confirmed Plan, KHC Long Term Notes in the aggregate principal amount of $49,647,756.22, and

KHC Short Term Notes in the aggregate principal amount of $15,887,281.98 were issued in respect of allowed Class 7 Claims under the Confirmed Plan on the Effective Date. As a result of the resolution of previously contested Class 7 Claims through September 9, 1987, an additional aggregate principal amount of $74,102,374.93 of KHC Long Term Notes and $23,712,760.00 of KHC Short Term Notes have been issued to holders of Class 7 Claims since the Effective Date. Again, there are 26 holders, as identified in paragraph 7 above, of KHC Long Term Notes and KHC Short Term Notes, and additional KHC Long Term Notes and KHC Short Term Notes, in an aggregate principal amount of $1,249,868.85 and $399,958.02, respectively, will be issued as disputed claims are resolved.

9. Through September 9, 1987, KHC has made distributions of Available Cash, as defined in the Confirmed Plan, in respect of allowed Class 7 Claims in an aggregate amount of $39,600,041.98. In connection with these distributions, an aggregate of $399,958.02 is reserved for future distribution upon resolution of the four remaining disputed Class 7 Claims described in paragraph 11 below.

10. On July 16, 1987, KHC paid its first regular interest payment in respect of the KHC Long Term Notes and Short Term Notes issued pursuant to the Confirmed Plan. As a result of the subsequent allowance of previously contested Class 7 Claims through September 9, 1987, an aggregate of $4,754,755.04 has been paid in interest on such notes and $48,022.74 is reserved for payment in respect of the four remaining disputed Class 7 Claims.

11. As of the date hereof, only four Class 7 Claims, aggregating $5,236,424.57, remain disputed. Assuming all of these remaining disputed Claims are allowed, they represent less than one percent of the total allowed Class 7 Claims.

12. As required by the Confirmed Plan, through September 9, 1987 cash payments in an aggregate amount of

$1,541,531.15 were made to 43 holders of allowed KIII-1/KHC-1 through KIII-5/KHC-5 Claims, and the balance of the holders of Claims in these classes had their rights reinstated, thereby representing full satisfaction of such allowed claims.

13. As required by the Confirmed Plan, nine holders of allowed KIII-6/KHC-6 claims (the "Class 6 Claims") were paid aggregate of $293,651.69 on the Effective Date. These amounts included the payment of installments of allowed Class 6 claims to Kenneth Davis of $8,312.86 and Kay Davis of $2,942.67. Kay Davis has an allowed Class 6 Claim of $8,828. The business records of KHC, however, indicate that by check dated April 11, 1985, while KHC and KIII remained debtors in possession, Kay Davis was paid $8,900 by KIII, which, according to KHC records and employees, constituted an advance in respect of the same expenses as constitute her claim.

14. In May 1987, KHC filed a motion with the Bankruptcy Court to accelerate and prepay the remaining $493,964.96 (plus accrued interest from the Effective Date) owed to holders of allowed Class 6 Claims and to reserve a total of $99,080.00 for the holders of disputed Class 6 Claims. At a hearing postponed from June 8, 1987 and held on August 28, 1987, the Bankruptcy Court ordered (and confirmed on September 4, 1987 at a further conference) that KHC be permitted to prepay such Class 6 Claims after 48 hours following oral arguments to the Fifth Circuit, currently scheduled for September 16, 1987. KHC intends to make such payments as permitted by the Bankruptcy Court.

15. On August 14, 1987, the Bankruptcy Court disallowed approximately 120 previously contested employee wage claims aggregating approximately $300,000, representing substantially all of the remaining contested Class 1, Class 5 and Class 6 Claims. Remaining disputed claims in those Classes are scheduled for hearing on October 19, 1987.

16. Pursuant to Claims resolutions described in foregoing paragraphs, there are approximately 16 contested Claims

remaining to be resolved aggregating in face amount approximately $5.5 million, excluding certain continuing disputes relating to professional fees.

CHANGES IN MANAGEMENT

17. Pursuant to the Confirmed Plan and Amended Articles of Incorporation, the former board of directors of KHC (composed of Kenneth Davis, T. Cullen Davis and Kay Davis) was removed and a new board of directors of KHC was appointed consisting of Joe B. Freeman, L. E. Simmons and Francis L. Durand. Subsequently, L. E. Simmons resigned from the board and I was elected to fill the vacancy created by his resignation.

18. On the Effective Date, all former officers of KHC were removed and the following officers were elected by the newly constituted board of directors of KHC:

Name	Office
Joe B. Freeman.....	Chairman of the Board, President and Chief Executive Officer
David E. Hawthorne	Vice President, Secretary and Treasurer

On the Effective Date, the new board of directors of KHC approved a three-year employment agreement with Joe B. Freeman and a letter agreement with respect to my own employment.

19. Also on the Effective Date, KHC, as the sole shareholder of the following six subsidiaries (three of which are KHC Appellants in the KHC Appeal), among other things, removed the existing boards of directors and elected new boards of directors for such subsidiaries (the "Wholly Owned Subsidiaries") in accordance with the respective corporate law

of the states of their incorporation and the respective articles or certificates of incorporation and by-laws of each corporation ("Charter Documents"):

Wholly Owned Subsidiaries	State of Incorporation
Beta Development Co.	Texas
Frigette Corporation	Texas
Geodril Inc.	Nevada
Kimco, Inc.	Texas
Moore & Sons, Inc.	Tennessee
Sierra International, Inc.	Texas

On the Effective Date, pursuant to applicable corporate law and Charter Documents, the boards of directors of each of the Wholly Owned Subsidiaries removed existing officers and elected new officers.

20. Subsequent to the Effective Date, KHC and its subsidiaries, in accordance with applicable corporate law and Charter Documents caused shareholder actions to be taken to remove the directors of each of the following 37 direct or indirect subsidiaries of KHC and, except in the case of Unit Rig & Equipment Co. (South Africa) (Proprietary) Limited, to elect new directors of such subsidiaries (the "Other Subsidiaries"):

Other Subsidiaries	Jurisdiction of Organization
AMC Air Conditioning Company	Texas
Andes Drilling Company	Nevada
CS&S Liquidating Co. (formerly Cummins Sales and Service, Inc.)	Texas
Cummins Sales and Service de Venezuela, C.A.	Venezuela
Cumvenca, Inc.	Texas
Globe Machinery & Supply Company	Iowa
Harrisburg, Inc.	Texas
KECO Limited	Alberta, Canada
Kendavis Industrial Supply Co.	Texas
Loffland Brothers Company	Texas
Loffland Brothers Company of Canada	Delaware

Other Subsidiaries	Jurisdiction of Organization
Loffland Brothers Eastern Hemisphere, Inc. ...	Texas
Loffland Brothers International, Inc.	Delaware
Loffland Brothers North Sea, Inc.	Nevada
Loffland Brothers (Singapore) Pte. Ltd.	Singapore
Mechanical Rubber Products Corporation	Nevada
Miami-Dickerson Steel Company	Ohio
Midco Caribe Co.	Texas
Midco-Chicago Company.....	Illinois
Midco Equipment Co.	Tennessee
Midco Norway Inc.	Nevada
Mid-Continent Supply Co.	Texas
Mid-Continent Supply Eastern Hemisphere Co.	Texas
Mid-Continent Supply Western Hemisphere Co.	Texas
Rig-A-Lite Company, Inc.	Texas
Sligo, Inc.	Nevada
Stair Pipe and Supply Co.	California
Stratoflex, Inc.	Texas
Stratoflex of Canada, Limited	Ontario, Canada
Unit Rig & Equipment Co.	Texas
Cumvenca, C.A.	Venezuela
Loffland Brothers de Venezuela, C.A.	Venezuela
Loffland Brothers (Malaysia) Sdn. Bhd.	Malaysia
Midco Nederland B.V.	The Hague
Nadrico Saudi Limited	Saudi Arabia
Unit Rig & Equipment Co. (Australia) Pty. Limited	Australia
Unit Rig & Equipment Co. (South Africa) (Proprietary) Limited	South Africa

Such new boards of directors have, in certain cases, removed certain of the prior officers of the Other Subsidiaries and elected new officers. Subsequent to such elections, further management changes have been required as a result of the termination of employment of certain management personnel including changes at Loffland Brothers Company, Moore & Sons, Inc. and Unit Rig & Equipment Co.

THE DECISION TO SEEK DISMISSAL OF THE APPEAL

21. Prior to April 29, 1987, the law firm of Locke, Purnell, Boren, Laney & Neely, now Locke Purnell Rain Harrell, ("Locke Purnell") was counsel of record for the KHC Appellants in the bankruptcy proceedings. On April 16, 1987, Jones, Day, Reavis & Pogue ("Jones Day") was retained as counsel for KHC. On April 20, 1987, Joe B. Freeman, Chairman of the Board of KHC and an officer of each of the Wholly Owned Subsidiaries advised Locke Purnell that it was not authorized to take any actions on behalf of KHC or the Wholly Owned Subsidiaries without the prior authorization of Mr. Freeman. The current management of KHC and the other KHC Appellants did not authorize Locke Purnell either to file any briefs or other papers in the instant appeal of the Confirmed Plan, or to continue to pursue this Appeal.

22. On May 18, 1987, the Boards of Directors of each of the KHC Appellants held board meetings to consider, among other things, the propriety of the continued prosecution of the KHC Appeal before this Court. As a result of these deliberations, the Boards of Directors of each of the KHC Appellants determined that it was not in the best interests of the respective corporations or their various shareholders and creditors to continue to prosecute this appeal. Accordingly, Jones Day was directed to seek a dismissal of the appeals. In addition, the boards of directors determined to waive rights under 28 U.S.C. § 455 to the extent permitted by applicable law.

OTHER SIGNIFICANT EVENTS

23. On August 25, 1987, upon the joint motion of the KHC subsidiaries and certain bank creditors, the Bankruptcy Court dismissed, without prejudice, involuntary petitions filed under Chapter 11 of the Bankruptcy Code against the following subsidiaries of KHC:

Cummins Sales and Service, Inc.
Frigette Corporation
Globe Machinery & Supply Company
Harrisburg, Inc.
Kendavis Industrial Supply Co.
Mechanical Rubber Products Corporation
Miami-Dickerson Steel Company
Midco Equipment Co.
Moore & Sons, Inc.
Rig-A-Lite Company, Inc.
Sligo, Inc.
State Pipe and Supply Co.

Thus, of the 13 involuntary petitions which were filed in May 1985 and which remained pending on the Effective Date, only that against Unit Rig & Equipment Co. remains pending as of the date hereof.

24. In connection with the dismissal of involuntary debtors described in paragraph 23 above, each such debtor undertook to pay all undisputed, liquidated pre-petition claims in full. As of September 1, 1987, payment of an aggregate of approximately $7 million has been made to approximately 2,000 holders of such claims.

25. On August 19, 1987, KHC caused to be filed a motion to dismiss the Chapter 11 case which is pending against Geodril Inc., a wholly owned subsidiary. Such motion is scheduled to be heard by the Bankruptcy Court on October 1, 1987.

26. Since the Effective Date, new management of KHC and/or its subsidiaries have undertaken a number of activities concerning the disposition of significant assets including:

(a) Execution of a contract to sell certain real property of Unit Rig & Equipment Co. for a purchase price of $1.3 million.

(b) Execution of a letter of intent and subsequent contract negotiations for the sale of certain of the assets of the Mid-Continent Division of KECO Limited for an estimated purchase price of approximately $3 million.

(c) Negotiation of a contract for the sale of certain of the assets of Unit Rig & Equipment Co. and the Unit Rig Division of KECO Limited for an estimated purchase price of approximately $26 million.

(d) Solicitation and receipt of bids, and subsequent contract negotiations, for the purchase of substantially all of the assets of Beta Development Co. for a purchase price substantially in excess of $20 million.

In addition, negotiations and solicitations are being actively pursued for the disposition of certain other assets of KHC and/or its subsidiaries.

27. Plans of reorganization of Mid-Continent Supply Co. and for Loffland Brothers Company and its subsidiaries, Loffland Brothers Eastern Hemisphere Inc. and Loffland Brothers (Singapore) Pte. Ltd are currently being developed by management of such companies. In that connection, Loffland Brothers Company has filed objections or motions to determine claims in respect of approximately 1,450 claims aggregating approximately $10 million, and Mid-Continent Supply Company has filed an objection to the claim of its largest trade creditor for in excess of $10 million. In addition, claims of in excess of $30 million in each of the cases involving Geodril Inc., Mid-Continent Supply Co., Loffland Brothers Eastern Hemisphere, Inc. and Loffland Brothers (Singapore) Pte. Ltd. filed

by KHC's insurance carriers have been withdrawn conditioned upon affirmance of the Confirmed Plan by this Court.

28. Through July 1987, the KHC Appellants have incurred and paid on a current basis in excess of $20 million in professional fees in connection with the bankruptcy cases. Certain of such fees have been paid on an interim basis and remain in dispute.

Further affiant sayeth naught.

/s/ David E. Hawthorne

DAVID E. HAWTHORNE

SWORN TO BEFORE ME and subscribed in my presence this 9th day of September, 1987.

/s/ Janet E. Prachyl

Notary Public in and
for the State of Texas

My Commission Expires:

12/11/90

CERTIFICATE OF SERVICE

I, Brett A. Ringle, counsel of record for Respondent Kendavis Holding Company and a member of the Bar of the Supreme Court of the United States, hereby certify that I have served three copies of Respondent Kendavis Holding Company's Brief in Opposition to Petition for Writ of Certiorari and the Joint Appendix to Briefs in Opposition of Respondents Kendavis Holding Company and the Official Unsecured Creditors' Committees on all parties required to be served, by depositing three copies of each in the United States mail, on this 20th day of December, 1987, with first class postage prepaid, addressed to the listed counsel of record at the addresses indicated.

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